

professional consultants such as engineers, architects, management agents and attorneys, when the recipient did not know the other party had submitted inaccurate or false information;

(d) Error by FmHA or its successor agency under Public Law 103-354 personnel, either in making computations or failure to follow published regulations or other agency issuances; or

(e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved or which was caused by omission from the instrument of language required by applicable regulation.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

**§ 1951.657 Notification to recipient.**

(a) Collection efforts will be initiated by the District Director by a letter substantially similar to exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office), and mailed by the servicing official to the recipient by "Certified Mail, Return Receipt Requested," with a copy to the State Director and, for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all recipients who received unauthorized assistance, regardless of amount. The letter will:

(1) Specify in detail the reason(s) the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid according to exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office); and

(3) Establish an appointment for the recipient to discuss with the District Director the basis for FmHA or its successor agency under Public Law 103-354's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA or its successor agency under Public Law 103-354's determination that the assistance received was unauthorized.

(b) If the recipient meets with the District Director, the District Director will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute FmHA or its successor agency under Public Law 103-354's findings. When requested by the recipient, the District Director may grant additional time for the recipient to assemble documentation. When an extension is granted, the District Director will specify a definite number of days to be allowed and establish the followup necessary to assure that servicing of the case continues without undue delay.

**§ 1951.658 Decision on servicing actions.**

When the District Director is the same individual who approved the unauthorized assistance, the State Director must review the case before further actions are taken by the District Director.

(a) *Payment in full.* If the recipient agrees with FmHA or its successor agency under Public Law 103-354's determination or will pay in a lump sum, the District Director may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be the amount stated in the letter as shown in exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office). The requirements of subpart E of part 1965 will be followed with appropriate modifications for prepayments under this subpart. If the loan was subject to restrictive-use provisions prior to the request for payment in full, the project will remain subject to restrictive-use provisions. Wherever feasible, appropriate, or necessary to protect tenants and the low- and moderate-income population of the community, all attempts to encourage the borrower to sell the project to an acceptable transferee will be made before the prepayment is accepted. All tenant notifications and restrictive-use provisions, when applicable, must be followed when prepayment of all debt on an MFH project is demanded. The District Director will remit collections as follows:

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(1) In the case of the loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a "Miscellaneous Collection for Application to the General Fund."

(3) In the case of a loan or grant which was identified in an OIG audit, the District Director will report the repayment as outlined in §1951.668 (a)(1)(i), (a)(3), or (a)(6) as applicable.

(4) In the case of RA, the repayment will be handled as outlined in §1951.661 (a)(3) and exhibit E to FmHA or its successor agency under Public Law 103–354 Instruction 1930–C.

(b) *Continuation with recipient.* If the recipient agrees with FmHA or its successor agency under Public Law 103–354's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in §1951.668 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in §1951.652 (d);

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA or its successor agency under Public Law 103–354's financial interests.

(c) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA or its successor agency under Public Law 103–354's determination, or if the recipient fails to respond to the initial letter prescribed in §1951.657 within 30 days, the District Director will notify the recipient by letter substantially similar to exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by FmHA or its successor

agency under Public Law 103–354 to be unauthorized;

(2) A statement of further actions to be taken by FmHA or its successor agency under Public Law 103–354 as outlined in paragraph (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

(d) *Appeals.* Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to subpart B of part 1900 of this chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an appeal is not made during the time allowed, the District Director will proceed with the actions outlined in paragraph (e) of this section, as applicable. If during the course of appeal the appellant decides to agree with FmHA or its successor agency under Public Law 103–354's findings or is willing to repay the unauthorized assistance, the District Director will proceed with the actions outlined in paragraph (a) or (b) of this section.

(e) *Liquidation of loan(s) or legal action to enforce collection.* If the recipient is unwilling or unable to arrange for repayment as provided in paragraph (a) of this section or continuation is not feasible as provided in paragraph (b) of this section, one of the following actions, as appropriate, will be taken:

(1) *Active borrower with a secured loan.*

(i) The District Director will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented by an entry in the running record of the case file. Where real property is involved, a letter will be prepared by the District Director and signed by the recipient agreeing to voluntary liquidation. For organizations, a resolution of the governing body may be necessary in addition to the running record notation. If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in

accordance with subpart A of 1955 of this chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than \$1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the District Director wishes to make an exception to forced liquidation under paragraph (e)(1)(i)(B) of this section, a request for an exception under § 1951.669 will be made.

(ii) When all of the conditions of paragraph (a) or (b) or this section are met, but the recipient does not repay or refuses to execute documents to effect necessary account adjustments according to the provisions of § 1951.661, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraph (e)(1)(i)(A) or (e)(1)(i)(B) of this section account adjustments will be made by FmHA or its successor agency under Public Law 103-354 without the signature of the recipient according to § 1951.668(a)(5). In these cases, the recipient will be notified by letter of the actions taken with a copy of Form FmHA or its successor agency under Public Law 103-354 1951-12, "Correction of Loan Account," if applicable.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation).* The District Director will document the facts in the case and submit it to the State Director who will request the advice of OGC on pursuing legal action to effect collection. The State Director will tell OGC what assets, if any, are available from which to collect. The case file, recommendation of State Director and OGC comments will be forwarded to the National Office for review and authorization to implement recommended servicing actions.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

§§ 1951.659–1951.660 [Reserved]

**§ 1951.661 Servicing options in lieu of liquidation or legal action to collect.**

When all of the conditions outlined in § 1951.658(b) are met, an unauthorized loan or grant will be serviced according to this section and § 1951.668, provided the recipient has the legal and financial capabilities.

(a) *Active borrower/grantee—(1) Unauthorized loan.* (i) *Correction of problem.* If the problem causing the assistance to be unauthorized can be corrected, corrective action will be required. For example, where a loan was in excess of the authorized amount, the recipient will be required to refund the difference; or where the loan included funds for purchase of excess land, the recipient will be required to sell the excess land and the proceeds will be applied to the account as an extra payment; or where a restrictive-use provision was omitted from a loan document, the provision will be inserted.

(ii) *Continuation on existing terms.* When there is no specific problem which can be corrected, continuation on the existing terms is authorized.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the recipient was eligible for the loan but should properly have been charged a higher interest rate than that shown in the debt instrument, resulting in the receipt of unauthorized subsidy benefits, the interest rate must be corrected to that which was in effect when the loan was approved. All payments made will be reversed and reapplied at the correct interest rate and future installments will be scheduled at the correct interest rate. A delinquency which is created will be serviced according to subpart B of part 1965 of this chapter. After reapplication of payments, the loan will be serviced as an authorized loan. Change in interest rate will be accomplished according to § 1951.668. When the recipient is a public body with loans secured by bonds on which interest rate cannot legally be changed or payments reversed or reapplied, continuation on existing terms is authorized.